IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3109 OF 2004
IN
WRIT PETITION NO.10855 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's Order or Directions and Registrar's Orders	Court's or Judge's Orders

Mr.G.S. Godbole with Mr.N.Muley for Petitioners
Mr.N.V. Walawalkar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 30, 2005**

P.C.:

. Heard. Civil Application is allowed. Amendments to be carried out forthwith.

vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10855 OF 2004

Gajanan Sidusa Kosandal & Ors. ... Petitioners

V/s.

Mohanlal Bapubhai Shah ... Respondent

Mr.G.S. Godbole with Mr.N.Muley for Petitioners
Mr.N.V. Walawalkar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 30, 2005**

P.C.:

. The Petition challenges the concurrent findings of fact of the two Courts below. The trial Court has decreed the suit on the ground of section 13(1)(e), 13(1)(g) and 13(1)(i) of the Bombay Rent Act and the appellate Court confirmed the order. The suit premises consist of an open plot of land.

2. According to the learned Advocate for the Petitioner, both the Courts have not properly interpreted the agreement dated 16.9.1966 by which the suit land was let out to the tenant described as "partner of Shri Siddeswar Garage Sangli". The Partner Shri Gajanan has signed the same as "owner". Both the

Courts have considered this document to mean that the tenancy was created in the name of Gajanan. The learned Counsel for the Petitioner submits that the rent receipts and the agreement indicate that the tenancy was in the name of Siddeshwar Garage, of which the defendants were partners.

3. The partnership deed has not been brought on record either before the trial Court or the appellate Court. In the deposition of Gajanan, he has stated that he is unaware as to whether the deed of partnership was with him. The partnership deed is sought to be brought on record by filing a compilation in this Court. In my view, this document cannot be considered at this stage; firstly because there is no application for bringing the same on record and secondly because it would be too late in the day to consider this document which allegedly is the deed of partnership. This document, which according to the Petitioner was in existence since 1966, was not brought on record either before the trial Court or the appellate Court and, therefore, the finding of subletting cannot be faulted.

4. Even in respect of the bonafide and reasonable requirement of the suit land, according to both the Courts below, a case has been made out by the landlord

for ejectment of the Petitioners from the suit land. There is a finding recorded that the suit premises are required by the Respondent bonafide and reasonably for a godown. The question of comparative hardship has also been answered in favour of the landlord. I see no infirmity in the orders of the Courts below. Petition rejected.

5. The learned Advocate for the Petitioner seeks some time to vacate the suit land. Time to vacate the suit land is granted for a period of 12 weeks on condition that the Petitioners furnish an undertaking in the usual terms in this Court within four weeks from today.